

**REMARKS**

The Examiner is requiring restriction to one of the following groups:

Group I: Claims 23-32, drawn to a method of fabricating a magnetic head; and

Group II: Claims 1-22, drawn to a magnetic head element for recording/reproducing apparatus.

Applicants have elected Group II, claims 1-22, with traverse.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required. (M.P.E.P. § 803). The burden of proof is on the Examiner to provide reasons and/or examples, to support any conclusion in regard to patentable distinctions. (M.P.E.P. § 803). Applicants respectfully traverse the restriction requirement on the grounds that the Examiner has not carried the burden of providing any reasons and/or examples to support any conclusion that the claims of the restricted groups are patentably distinct.

The Examiner has categorized the relationships between Groups I and II as process of making and product made. Patentable distinctness may be shown if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make other and different products; or (B) that the product as claimed can be made by another and materially different process (M.P.E.P. § 806.05(f)). The Examiner asserts that the claimed article can be fabricated using steps, which do not follow the same chronological order of the claimed steps and/or may omit certain step(s).

The Examiner's assertions, however, fail to support the criteria required under § 806.05(f), since a mere rearrangement of the order of the claimed process steps is not evidence that the claimed article "can be made by another and materially different process" (emphasis added). As such, the Examiner's assertion is merely a restatement of the

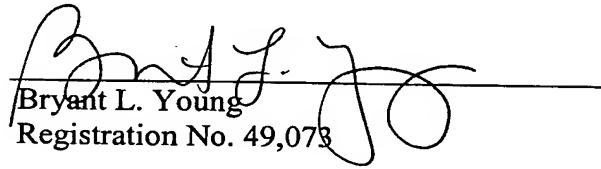
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Reply to Office Action of May 9, 2005

Examiner's conclusion that the inventions are patentably distinct, which provides insufficient reasons to support a restriction of the inventions.

Accordingly, the restriction is believed to be improper. The withdrawal of the requirement is respectfully requested.

Respectfully submitted,

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